

April 8, 2016

*Martin R. Siegel, Esquire*  
*Direct Dial: (717) 849-4138*  
*msiegel@stockandleader.com*

*Via Certified Mail*

Ag Salt Processing  
530 Storm Store Road  
Gettysburg, PA 17325

*Via Certified Mail*

Merle A. and Amy L. Herr  
31285 Highway 27  
Guys Mills, PA 16237

*Via Certified Mail*

Steven D. Fuhrman  
50 N. Schoolhouse Road  
Thomasville, PA 17364

Re: Notice of Intent to Sue for Violations of the Federal Clean Water Act,  
Pennsylvania Clean Streams Law, Federal Clean Air Act, and Pennsylvania Air  
Pollution Control Act;  
Ag Salt Processing, Adams County, Pennsylvania

Dear Mr. and Mrs. Herr and Mr. Fuhrman:

This letter is a notice that the David and Michele Hartlaub ("Hartlaubs") intend to sue Ag Salt Processing ("Ag Salt"), Merle A. Herr and Amy L. Herr ("Herrs"), and Steven D. Fuhrman ("Fuhrman") for violations of the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Pennsylvania Clean Streams Law, 35 P.S. § 691.1 *et seq.*, the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the Pennsylvania Air Pollution Control Act, 35 P.S. § 4001 *et seq.* at its facility located at 530 Storm Store Road, Mt. Pleasant Township, Adams County, Pennsylvania. This notice is provided pursuant to the Clean Streams Law, 35 P.S. § 601(e), the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A); 40 C.F.R. §§ 135.1-135.3, the Air Pollution Control Act, 35 P.S. § 4013.6(c), and the Clean Air Act, 33 U.S.C. § 7604; 40 CFR §§ 54.1 – 54.3.

The Hartlaubs reside at 575 Storm Store Road, Gettysburg, PA, directly across Storm Store Road from the Ag Salt facility. They have lived at this property since 1988. Their farm surrounds their home. Merle A. Herr, president of Ag Salt, and Amy Herr, are the owners of the property at 530 Storm Store Road ("Property"), having acquired it in 1996. Merle A. Herr and Steven D. Fuhrman are the owners of Ag Salt Processing, a fictitious named registered with the Pennsylvania Department of State on April 8, 2013. Ag Salt processes and packages salt for distribution to end

users. The Property is located in an Agricultural Preservation District established by Mt. Pleasant Township ("Township").

When Ag Salt initiated its business in 1997, it used leftover salt utilized in the pretzel business, mixed it with other materials, and sold it to the agricultural industry as "feed salt." In 2010, Ag Salt significantly expanded its business. It shifted its business away from feed salt to producing salt used primarily for ice melt. As part of this business expansion, Ag Salt built a large addition to its original structure and constructed a retention basin. Water stored in the basin is used for cooling purposes in Ag Salts' salt processing. In 2014, Ag Salt continued its expansion with the construction of another building addition, installation of a concrete paved slab for outside storage, and an expansion of gravel surfaced areas for product storage.

Ag Salt's operations have created numerous environmental violations. Water pollution emanating from the property has contaminated a neighbor's water supply, which had to be replaced. In addition, overflow from the retention pond discharges through a ditch to a pipe that runs under Storm Store Road and directly onto the Hartlaub's property. This unpermitted discharge of industrial waste, contaminated with salt, has created a seven foot wide ditch on what was previously relatively flat land. This unpermitted discharge of industrial waste has also contaminated portions of a cornfield owned by the Hartlaubs, preventing the growth of crops.

Fugitive dust emissions from the Ag Salt facility have significantly impaired the Hartlaubs' enjoyment of their property. Dust emanating from truck traffic and Ag Salt's operations coats the Hartlaubs' home and automobiles, prevents them from opening their windows, and severely limits outside activities on their property.

On July 22, 2015, the Township's Zoning Hearing Board determined that Ag Salt had expanded its business without obtaining necessary zoning approvals and denied Ag Salt's application for variances from the Township's zoning requirements. The Zoning Hearing Board determined that Ag Salt's current operations not only are detrimental to the public welfare but also seriously impair the Hartlaubs' use of their property. The Zoning Hearing Board also noted that Ag Salt has failed "to make any serious effort to control surface water issues." Furthermore, the Zoning Hearing Board noted that Ag Salt never sought required zoning approval prior to its expansion in 2010. As a result of this decision, which was not appealed, Ag Salt is currently in violation of the Township's zoning requirements.

On June 23, 2015, the Pennsylvania Department of Environmental Protection ("DEP") inspected the Ag Salt facility. As a result of that inspection, DEP noted that Ag Salt was in violation of sections 301 and 307 Pennsylvania's Clean Stream Law, 35 P.S. §§ 621.301 and 621.307, by causing the unpermitted release of industrial waste. In its inspection report, DEP suggested that Ag Salt obtain a NPDES permit for the industrial waste discharges from the retention pond.

On June 24, 2015, DEP issued Ag Salt a Notice of Violation ("NOV") that stated that Ag Salt was in violation of sections 301 and 307 of the Clean Streams Law. DEP, in the NOV, required that Ag Salt respond within 10 days with a proposal and schedule to implement

corrective measures. As of the date of this letter, Ag Salt and/or its representatives neither have responded to the NOV nor have submitted an application for a NPDES permit. The unpermitted discharges have been ongoing. The most recent unpermitted discharge of industrial waste from Ag Salt's retention pond occurred on March 30, 2016.

Ag Salt, Merle A. Herr, and Steven D. Furhman are in violation of sections 301 and 307 of the Clean Streams Law, which prohibits the discharge of industrial waste to the waters of the Commonwealth without a permit. In addition, Ag Salts', Merle A. Herr's, and Furhman's unpermitted discharge of industrial wastes violates the federal Clean Water Act, 33 U.S.C. § 1311(a). The Herrs are also strictly liable under section 316 of the Clean Streams Law, 35 P.S. § 621.316, for any pollution or danger of pollution resulting from a condition on their land. Similarly, the Herrs are strictly liable under section 7.3 of the Pennsylvania Air Pollution Control Act, 35 P.S. § 4007.3, for air pollution or danger of air pollution from their air contamination source.

Pursuant to section 307(c) of the Clean Streams Law, Ag Salts', Merle A. Herr's, and Furhman's unpermitted discharge of industrial waste constitutes a nuisance. Finally, Ag Salt's, Merle A. Herr's, and Furhman's violations of Pennsylvania's Air Pollution Control Act constitute a public nuisance, 35 P.S. § 4013.

Pursuant to Section 601(c) of the Pennsylvania Clean Streams Law, 35 P.S. § 691.601(c), any person may commence a civil action against any other person alleged to be in violation of the Clean Streams Law, to compel compliance with the Law. In addition, Section 601(g) of the Clean Streams Law authorizes a court to award costs of litigation. Similarly, the federal Clean Water Act authorizes citizens to bring suit against any person alleged to be in violation of an effluent standard or limitation established under the Clean Water Act. 33 U.S.C. § 1365(a)(1). The Clean Water Act also authorize a court to award litigation cost, 33 U.S.C. § 1365(d), and to apply any appropriate civil penalties, 33 U.S.C. § 1365(a).

In addition, pursuant to section 13.6 (c) of the Pennsylvania Air Pollution Control Act, 35 P.S. § 4013.6(c), any person may commence a civil action to compel compliance with the Act. Similarly, the federal Clean Air Act authorizes any person to commence a civil action against any person alleged to have violated an emission standard or limitation, 42 U.S.C. § 7604. Both the Air Pollution Control Act and the Clean Air Act authorize a court to award of litigation costs, 35 P.S. § 4013.6(f) and 42 U.S.C. § 7604(d), and to apply any appropriate civil penalties, 35 P.S. § 4013.6(c) and 42 U.S.C. § 7604(a).

In accordance with the Clean Streams Law, 35 P.S. § 601(e), the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A); 40 C.F.R. §§ 135.1-135.3, the Air Pollution Control Act, 35 P.S. § 4013.6(c), and the Clean Air Act, 33 U.S.C. § 7604; 40 CFR §§ 54.1 – 54.3, this letter serves to notify you that the Hartlaubs intend to file suit at any time beginning sixty (60) days after the postmarked date of this letter to enjoin violations described above and to obtain any other appropriate relief.

If you would like to discuss the issues identified in this letter or to offer a proposal for resolving these issues, please feel free to contact me.

Very truly yours,

STOCK AND LEADER



Martin R. Siegel

cc: David and Michele Hartlaub  
Samuel Teeter, Esquire  
Shawn M. Garvin, Regional Administrator  
John Quigley, Secretary  
Gina McCarthy, Administrator